

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

No. 18-1213

Ashford University, LLC

v.

Secretary of Veterans Affairs

DOCKETING STATEMENT

This Docketing Statement must be completed by all counsel and filed with the court within 14 days of the date of docketing. When the United States or its officer or agency is a party, this Docketing Statement must be completed by all counsel and filed with the court within 30 days of docketing. All questions must be answered or the statement will be rejected.

Name of the party you represent Ashford University, LLC

Party is (select one)

☒ Appellant/Petitioner☐ Cross-Appellant☐ Appellee/Respondent☐ Intervenor

Tribunal appealed from and Case No.

Dept. of Veteran Affairs, Muskogee Regional Benefit OfficeDate of Judgment/Order November 9, 2017

Type of Case

Veteran's Benefits

Relief sought on appeal

Vacatur of unlawful and/or ultra vires agency actionRelief awarded below (if damages, specify) N/ABriefly describe the judgment/order appealed from The director of the regional benefit office, acting pursuant to authority

delegated by the Secretary, informed Ashford of his "inten[tion] to suspend payment of educational assistance and suspend approval of new enrollments and reenrollments for Ashford University."

Nature of judgment (select one)

☐ Final Judgment, 28 USC 1295☐ Rule 54(b)☐ Interlocutory Order (specify type) _____☒ Other (explain; see Fed. Cir. R. 28(a)(5)) Respondent's challenged action adopts or reflects previously

unannounced substantive and/or interpretive legal rules, and is therefore "[a]n action of the Secretary to which section 552(a)(1) or 553 of title 5 (or both) refers," which means it "is subject to judicial review ... in accordance with chapter 7 of title 5 ... in the United States Court of Appeals for the Federal Circuit." 38 U.S.C. § 502; see also Fed. R. App. P. 15; Fed. Cir. R. 47.12.

FORM 26. Docketing Statement**Form 26****Rev. 10/16**

Name and docket number of any related cases pending before this court plus the name of the writing judge if an opinion was issued.

If none, please state none.

None

Brief statement of the issues to be raised on appeal Whether VA's decision:

- (1) improperly amends VA's regulations without following mandatory procedures;
- (2) adopts an arbitrary and capricious definition of the term "main campus" in 38 C.F.R. § 21.4250; and
- (3) is not in accordance with law because it attempts to exercise "supervision or control" over a state agency responsible for approving GI Bill benefits, contrary to 38 U.S.C. § 3682.

Have there been discussions with other parties relating to settlement of this case? ☐ Yes ☒ No If "yes," when were the last such discussions?

☐ Before the case was filed below?

☐ During the pendency of the case below?

☐ Following the judgment/order appealed from?

If "yes," were the settlement discussions mediated? ☐ Yes ☐ No

If they were mediated, by whom?

Do you believe that this case may be amenable to mediation? ☐ Yes ☒ No

Please explain why you believe the case is or is not amenable to mediation.

VA's decision reflects the agency's firm adoption of legal rules that are, in Ashford's understanding, both procedurally and substantively unlawful. Ashford sees no realistic prospect that VA would retreat from those positions absent an adverse judgment.

Provide any other information relevant to the inclusion of this case in the court's mediation program.

I certify that I filed this Docketing Statement with the Clerk of the United States Court of Appeals for the Federal Circuit and served a copy on counsel of record, this

21st day of December, 2017

by: CM/ECF

(manner of service)

Carter G. Phillips /s/ Carter G. Phillips

Name of Counsel

Signature of Counsel

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